IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 120 OF 2006

SHRI SHAM RAMNATH KAMULKAR, ...Applicant
PRESENTLY LODGED AT JUDICIAL LOCK
UP, MAPUSA GOA.

Versus

STATE, AS REPRESENTED BY ....Respondent
OFFICER-IN-CHARGE, MAPUSA POLICE
STATION, MAPUSA GOA

Ms. Caroline Collasso, Advocate for the Applicant/Accused.
Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent.

Coram:- N. A. BRITTO, J.

Date:- 2nd March, 2006

P.C.

Heard Ms. Collasso, the learned Counsel on behalf of the applicant and Ms. Coutinho, the learned P.P. on behalf of the respondent.

2. The applicant herein was arrested on 14.12.2005 in Crime no. 261/06 under Section 302 I.P.C. and since then he has been in custody. The applicant approached the Court of Sessions for bail and it appears that his bail application came to be rejected by Order dated 04.01.2006, on the ground that the applicant was involved in an offence, which was of serious nature and also because there was possibility of the applicant tampering with the witnesses, if released on bail. The facts stated show that the deceased Anand was a handicapped person and used a crutch to walk around. The accused and the deceased were seen sitting in front of a Bar of one Manuel on the footpath and they were quarrelling i.e. abusing each other filthy words, when all of a sudden, the deceased Anand, who was having the crutch with him, hit the accused on his right arm with the said crutch and the accused reacted by snatching the said crutch from the

hands of accused Anand and hit the same on his left hand and on his head on account of which, the deceased Anand collapsed and died and the accused ran away from the place with the said crutch. It appears that there are two witnesses, who witnessed the incident and whose statements have already been recorded.

3. Ms. Collasso, the learned Counsel on behalf of the applicant, has submitted that the incident took place on the spur of moment and there was no premeditation to cause the death of the deceased and, therefore, the applicant/accused could at the most convicted under Section 304 I.P.C. and not under Section 302 I.P.C. and, therefore, the applicant is entitled to be admitted to bail.

On the other hand, learned P.P. Ms. Coutinho, has submitted that at this nascent stage, it is not necessary to find out whether the offence allegedly committed by the accused would come under Section 302 or 304 IPC, and since death has been caused, the accused would be guilty under Section 302 IPC.

4. Only because the death has been caused, there is no warrant for any dogmatic approach to conclude that the offence committed by an accused is one of murder of the first degree. The facts stated and reproduced hereinabove, show that it is the deceased who hit the accused first with a crutch, which he was carrying and, thereafter, it is the accused, who snatched the said crutch from the hands of the accused and hit the deceased twice, once on his hand and once his head, as a result of which, the deceased collapsed and died. One of the main factors, which deters a Court from granting bail particularly in a case where a person is accused of an offence punishable with death or imprisonment for life, is prospect of his fleeing from justice. The graver the offence, the heavier the punishment. A person having reason to believe that a very severe punishment is likely to be imposed on him, may be inclined to jump bail unlike a person who has been accused of a crime, the punishment for which, may not be heavy or severe or a person who may think that there

may not be any likelihood of much punishment, however serious the charge may be. It is not necessary at this stage to conclude whether the offences committed by the accused would be 302 IPC or 304 IPC for any finding in that regard can come in the way of the accused or the prosecution in the trial of the case. The limitations of Section 437 (1) of Cr.P.C., have got to be read into Section 439(1) Cr.P.C. and the limitations are that the offences punishable should be with death or imprisonment for life. In other words, seriousness of the offence and the severity of the punishment, are foremost considerations, which a Court is required to take into consideration at the time of considering an application for bail. Considering the facts of the case stated hereinabove, regarding which there is no dispute, it does not appear that the accused has committed an offence which is very serious and which would invite punishment of death or imprisonment for life and, being so, this would be a fit case to admit the accused to bail. As far as the apprehension that there is a possibility that the accused will interfere with the two eye witnesses, it appears that the said apprehension is routinely made without any basis to support the same and, in this case, it appears to be more imaginary than real and being so, on that count also, in my view, the accused could not be denied bail.

5. In the circumstances, the accused is admitted to bail and shall be released upon execution of a bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Panaji.

N. A. BRITTO, J.

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